



COMMONWEALTH of VIRGINIA

Office of the Governor

Doug Domenech
Secretary of Natural Resources

September 3, 2010

VIA FACSIMILE, ELECTRONIC AND U.S. MAIL

Mr. Shawn Garvin
Regional Administrator
U.S. EPA Region 3
1650 Arch Street (3PM52)
Philadelphia, PA 19103-2029

RE: Transmittal of Virginia's Draft Phase 1 Watershed Implementation Plan

Dear Mr. Garvin:

The Chesapeake Bay is truly a national treasure and an ecological wonder. As Virginians, we have an obligation to protect this incredible natural and economic resource, and we are committed to ensuring a clean and vibrant Chesapeake Bay for future generations to enjoy and cherish.

On behalf of Virginia Governor Robert F. McDonnell, I want to thank you and your team for their hard work with all the Bay states.

Enclosed is the Phase I Draft Watershed Implementation Plan for the Commonwealth of Virginia. As you know, we have involved a broad group of stakeholders in the development of this draft, but the public at large has not had the opportunity to react to the significant issues and responsibilities contained in this document, so it is truly a draft proposal. We will listen closely to the public over the next two months, and this document will transform as we have the opportunity to consider the many comments we are sure to receive.

Governor McDonnell has expressed his concerns about the cost, science, authority, allocations, and timeliness in the development of the EPA mandates and process. Having only received our nitrogen and phosphorous allocations July 1, and sediment allocation August 13, it was difficult to properly develop a comprehensive plan such as this that may have an impact out to 2025 and beyond.

The EPA asserts that it must develop the Bay TMDL by December 2010 pursuant to the requirements of the Consent Decree entered in the case American Canoe Association et al. v. the United States EPA, 54 F. Supp. 2d 621 (E.D. Va. 1999). We

note, however, that Virginia was not a party to that case, and the Consent Decree actually established a deadline of May 2011 for the EPA to establish TMDLs for certain identified Virginia waters and pollutants, if Virginia had not done so itself. We also note that, although the EPA repeatedly refers to its “expectation” that Bay jurisdictions will develop WIPs and submit them to the EPA for approval, EPA in its December 2009 letter to the Commonwealth indicated the extensive actions it is willing to take to compel Virginia to develop and implement an “appropriate” WIP and meet the EPA’s compressed timeline.

It is important to emphasize that this plan is being developed during the worst economy in at least a generation. This draft plan takes into account the billions of dollars Virginians have already invested in Chesapeake Bay water quality to date. Full implementation of this plan will likely cost billions of new dollars, which are unfunded federal mandates on the state, localities, farmers, private industries and homeowners. For example, Virginia’s largest industry, agriculture, alone may face huge new costs (estimated \$800 million) for conservation practices like livestock exclusion stream fencing. In these austere times, we cannot guarantee such significant additional funding will be provided by our General Assembly. It may well be that the success of the draft WIP may be largely subject to the provision of sufficient federal funding to assist in covering these massive new unfunded administrative mandates of EPA.

Virginia will move forward with the implementation of this plan, as revised, with a clear focus on flexibility and cost effectiveness. It is our fundamental belief that an expanded nutrient credit exchange program will afford the same approach to other sectors, particularly urban stormwater and septic systems, and it will allow for decisions to be made across sectors in an orderly and cost-effective manner. Therefore Virginia will rely on principles of adaptive management taking advantage of new technology and low cost methods to achieve our goals. We will amend our plan as more cost effective management tools may be developed.

A significant concern is the nearly absolute reliance on modeling rather than looking directly at outcomes and results in the Bay. While this model has seen years of development, it continues to experience fundamental flaws that somewhat undermine its credibility. Similarly, we are convinced that the manner in which it has been used for this TMDL assumes a level of precision far beyond what the model is capable of and without regard for the economic consequences. This “inputs based” rather than “outputs based” approach continues to be a concern, since actual water quality improvement is our goal.

I also call your attention to our proposed approach for the James River. Because of its geographic location, the James itself has less impact on the water quality of the mainstem of the Chesapeake Bay than any other river. The James also is unique because of the chlorophyll standards that were adopted in 2005 with the concurrence of EPA. We believe that because sufficient new information is available for the James River, we should take the time necessary to review the James River numeric chlorophyll standards

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to ensure that they reflect the best science and regulatory approaches. Therefore, we have included a detailed plan to accomplish this review and amend standards if necessary prior to the scheduled revision of the TMDL in 2017. Our proposed plan demonstrates that we will meet the 2017 target loads prescribed by EPA in all basins, including the James.

Based on all these issues, Virginia reserves the right to adjust this proposed plan based on new information such as conservation efforts currently implemented but not accounted for in the model, adverse economic impacts on citizens and business, funding availability from federal sources in particular, and improved scientific methodologies.

Our work will not end with the submission of our draft Watershed Implementation Plan. We will continue to work with stakeholders and with the public to ensure that our implementation improves water quality in a manner that is sensible, fair and cost effective as this process unfolds over the next 15 years.

We look forward to continuing to work with you to improve water quality in the great Chesapeake Bay.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Domenech', with a large, stylized initial 'D'.

Douglas W. Domenech
Secretary of Natural Resources